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Supreme Court of the United States

OCTOBER TERM, 19 69

No. [redacted] 109

HENRY DORSEY,

Appellant,

versus

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL,

Appellees.

Application for Writ of Certiorari to the United States Court of Appeals, Fifth Circuit

---

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana
ATTORNEY FOR PLAINTIFF-APPELLANT

MONTGOMERY & CO., 1107 Poydras Street, New Orleans, Louisiana

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Application for Writ of Certiorari to the United States Court of Appeals, Fifth Circuit

TO THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, Fifth Circuit originally entered on March 18, 1969, timely rehearing denied on April 17, 1969, whereby defendants' motion to dismiss was affirmed and petitioner's lawsuit was dismissed.

OPINION BELOW

The opinion of the United States Court of Appeals,

Fifth Circuit, has not been officially reported. It is reproduced in Appendix A hereof.

JURISDICTION

Petitioner filed his original complaint in the United States District Court, Western District of Louisiana, alleging a conspiracy among the defendants to deprive him (and the actual deprivation,) of his constitutional liberty. He prayed for trial by jury of his claim for actual and punitive damages in the amount of One Million Five Hundred Thousand ($1,500,000.00) Dollars and for injunctive relief against defendants. A motion to dismiss for failure to state a claim was sustained without opinion in the district court and affirmed on appeal by the United States Court of Appeals, Fifth Circuit. Petitioner invokes the provisions of 28 USCA 1254 as the jurisdictional ground for this application.

QUESTION PRESENTED

1. Is the denial by state officials acting under color of law of a substantive decision of an administrative state agency, which invests a citizen with a substantial property right, an act contemplated by the provisions of 42 United States Code, Sections 1981, 1983 and 1988, and proscribed by the Fourteenth Amendment?

CONCISE STATEMENT OF THE CASE

This case involves the denial of due process and equal protection to petitioner on account of his race. His case is somewhat different from those to which

our courts unfortunately have grown accustomed. This case instances racial discrimination in reverse. This time it is a white male who has felt the sting of discrimination at the instance of a collection of negro men. The discrimination, however, is just as real, just as harmful, and just as repugnant to the rigorous demands of constitutional liberty as when it is generated, sponsored and inflicted on a negro man by a collection of white men. In this lawsuit, therefore, we test whether or not the color of a man's skin is to be considered in determining his legal rights; whether or not the provisions of 42 United States Code, Sections 1981, 1983 and 1988, are to be liberally and effectively applied only in favor of those American citizens who have a dark skin to the exclusion of all the other citizens.

The fact issues of this case are phrased and framed by the pleadings, which are admitted as true for the purpose of testing the validity of the Motion to Dismiss. Essentially these pleadings instance an inglorious effort on the part of officers of the N.A.A.C.P., while acting in concert and conspiracy with state officials, of denying to a white man his constitutional liberty. Thus far his claim for damages because of such unlawful conduct has been denied. If that decision is permitted to stand, it will mean, in the context of this case, that officers of the Ku Klux Klan can conspire with state officials to deny a colored man of his constitutional liberty with impunity, or else it will mean that the N.A.A.C.P. and its officers are immune from the provisions of 42 USC 1981, 1983 and 1988, and thus of the Fourteenth Amendment. Under the pleadings of this case seemingly such a horrendous result is

legally impossible. To place this important legal question in its proper perspective an elaboration on petitioner's pleadings is necessary.

Before the institution of this lawsuit petitioner was a lieutenant on the police force of the City of New Iberia, Louisiana, and had functioned in that capacity for more than twelve years. By virtue of the provisions of Louisiana Constitution, Article 14, Section 15.1, he had acquired permanent tenure and consequently could be removed from his position as a public officer only for good cause. By virtue of state law the Municipal Fire and Police Civil Service Board of New Iberia, Louisiana, was instituted as a state regulatory agency to conduct public hearings to determine the reasonableness of any disciplinary action taken against police officers of New Iberia, Louisiana, within certain legislative guidelines. On April 25, 1967, by letter addressed to the New Iberia Fire and Police Civil Service Board, J. Allen Daigre, acting as Mayor of the City of New Iberia, and Lee Fournet, acting as Chief of Police of New Iberia, Louisiana, informed this regulatory agency as follows:

> "This is to inform you that Lt. Henry Dorsey has been dismissed from the New Iberia Police Department for: failure to perform the duties of this position in a satisfactory manner."

Pursuant to state law (Louisiana Constitution, Article 14, Section 15.1, sub-paragraph 31) petitioner made timely written request of the regulatory agency for a hearing to determine the reasonableness of his

dismissal. Prior to the hearing granted by this regulatory board, by letter dated May 8, 1967, the city officials mentioned enlarged their original complaint against petitioner as follows:

> "This is to supplement the personal action taken on April 25, 1967, by the City of New Iberia in which Lt. Henry Dorsey, Jr., Police Department, was dismissed for failure to perform the duties of his position in a satisfactory manner.
>
> "The reasons for such action are as follows: On or about April 8, 1967, (1) Lt. Dorsey intentionally seized and carried Rosemary Vital Harris from her residence to the City Police headquarters without her consent and without valid reason; and (2) Lt. Dorsey returned the said Rosemary V. Harris to her residence in a police vehicle unaccompanied by any other officer in violation of rules, regulations and policy of the New Iberia Police Department.
>
> "The commission or omission of the above acts were prejudicial to the departmental service and contrary to the public interest or policy."

Parenthetically petitioner informs the court that he is a white male and Rosemary Vital Harris is a black female. On the hearing date of June 15, 1967, the regulatory board received evidence, including the testimony of Rosemary Vital Harris. Petitioner was grant-

ed the right to the assistance of counsel and his counsel was permitted to examine and cross-examine witnesses. After hearing all available evidence the regulatory board ordered petitioner's reinstatement as of the thirty first day following the effective date of his discharge, and communicated its decision to the appointing authority, Mayor Daigre of New Iberia, by letter dated June 19, 1967, reading as follows:

> "Dear Mayor Daigre:
>
> Based on the evidence at the public hearing held on June 15, 1967, the Civil Service Board of New Iberia modified the order of dismissal of Lt. Henry Dorsey to a 30 day suspension without pay. His pay is to be reinstated on the 31st day following the effective date of discharge."

Pursuant to the provisions of Louisiana Constitution, Article 14, Section 15.1, sub-paragraph 31, the decision of this regulatory board "shall be forthwith enforced by the appointing authority" (the appointing authority being Mayor Daigre) unless an appeal is taken. In speaking of appeal rights sub-paragraph 31 provides:

> "Any employee under classified service and any *appointing authority* may appeal from any decision of the Board, or from any action taken by the Board under the provisions of the section which is prejudicial to the employee or appointing authority. This appeal shall be taken by serving the Board, within thirty (30) days after entry of its decision, a written no-

> tice of appeal, stating the grounds thereof and demanding that a certified transcript of the record, or written findings of fact, and all papers on file in the office of the Board, filed with the designated court. The Board shall, within ten (10) days after the filing of the notice of appeal, make, certify, and file the complete transcript, with the designated court, and that court shall thereupon proceed to hear and determine the appeal in a summary manner. *This hearing shall be confined to the determination of whether the decision made by the Board was made in good faith for cause under the provisions of this section. No appeal to the court shall be taken except upon these grounds.*"

Thus the administrative decision reversing his dismissal and reinstating petitioner is revocable only by appeal by the appointing authority to available state court, and in the absence of a timely appeal, that decision is final and binding. That decision, therefore, invested petitioner with a substantial property right.

Petitioner alleges in his complaint that appellees conspired with state officials to deprive him of this property right without observing the rigorous demands of due process and the equal application of state laws. Essentially he charges that appellees and the state officials involved took from him his property right residing in that administrative decision through the naked abuse of state powers possessed by the state officials; they took the law into their own hands,

thwarted it and molded it to suit their own willful purpose. Defendants took a short cut; they perfected no appeal; they conducted no hearing; they simply caused the reversal of this administrative decision through the simple expediency of announcing its reversal. When they did this they applied prevailing state law unequally against petitioner and they accomplished this by a gross abuse of the power possessed by the state officials. He articulates this wrongful conduct in his complaint as follows:

> "Complainant is informed, believes and therefore avers that shortly after the rendition of this decision by the said Municipal Civil Service Board, J. B. Henderson, Harvey Britten, both acting individually and as agent for the National Association for the Advancement of Colored People, J. Allen Daigre, while acting under color of law in his capacity as Mayor of the City of New Iberia, Lee Fournet, while acting under color of law as Chief of Police of the City of New Iberia, Louisiana, and others unknown to your complainant, entered into a conspiracy to deny and deprive complainant of due process of law, the equal protection of State laws, and particularly of the benefits and legal effects of the decision aforesaid, ultimately for the purpose of depriving your complainant of his employment with the City of New Iberia, Louisiana, as a lieutenant with the City Police Department, secured to him by the laws of the State of Louisiana.

"Complainant alleges that in furtherance of said conspiracy said defendants while acting in their capacities herein aforesaid, organized and mobilized demonstrations, consisting of a collection of persons, voicing a protest against the decision aforesaid, solely for the purpose of intimidating members of the Municipal Fire and Police Civil Service Board to illegally recall the decision aforesaid or otherwise so modify it as to deprive your complainant of his rights, title and interest therein and of the legal fruits and benefits thereof, so as ultimately to deprive your complainant of his employment, the remuneration thereof and of constitutional due process and equal protection.

"Complainant is informed, believes and therefore states that in furtherance of said conspiracy defendants, acting alone or jointly, attempted to enlist the services of other public officials and particularly members of the governing body of the municipality of New Iberia, Louisiana, to join said defendants in the illegal effort of demanding that the aforesaid Municipal Civil Service Board reverse its decision.

"In furtherance of said conspiracy the said J. Allen Daigre, acting in concert with the other defendants herein, caused a letter to be *published* in The Daily Iberian, a local newspaper of New Iberia, Louisiana, as a

means of exerting undue influence, in which the said J. Allen Daigre requested that the Municipal Civil Service Board aforesaid reverse its decision, knowing that there was no sanction in law for such a reversal and further knowing that the legal available remedy was for the said J. Allen Daigre to perfect his appeal as provided for by law in such instances; as evidence of a willful intent, complainant gives this Honorable Court to understand that the said J. Allen Daigre in said letter confessed that the said Municipal Civil Service Board in fact had acted in good faith in rendering its decision, by saying "I am satisfied that the Board acted in good faith", thus disclosing that the said J. Allen Daigre knew there was no basis for any legal appeal and thus that said decision was legally irreversible and that his sole purpose for making said request and for acting in concert was to bring about the illegal reversal of said decision with a view to depriving your complainant of constitutional due process and equal protection and of the benefits of the decision of said Municipal Civil Service Board.

"In furtherance of said conspiracy, according to your complainant's information, the said Harvey Britten, acting in his capacity as Field Director of the National Association for the Advancement of Colored People aforesaid, sent a telegram to the Daily Iberian aforesaid stating in effect that the said Harvey Britten and

others unknown to your complainant had met with the defendant J. Allen Daigre, and Lee Fournet at the home of one Bishop Boudreaux to express their dissatisfaction with the findings of the aforesaid Municipal Civil Service Board and the resultant reinstatement of your complainant on the New Iberia Police Force; that the sole purpose for sending such a telegram was to cause the contents thereof to be widely circulated as a means of exerting undue influence on the members of the Municipal Civil Service Board aforesaid by implicitly suggesting support from Bishop Boudreaux in a predominantly Catholic community, such as is the City of New Iberia, Louisiana, in opposition to the fair decision of said Civil Service Board and by attempting to create a show of force as a means of intimidating members of said Civil Service Board into reversing their decisions contrary to law as a means of depriving your complainant of his rights, privileges and immunities secured to him by the Constitution of the United States.

"In furtherance of said conspiracy aforesaid and for the same reason herein aforesaid the said defendant J. Allen Daigre caused to have his letter to the Municipal Civil Service Board aforesaid published in The Daily Iberian, in which letter the said J. Allen Daigre deliberately went outside the ambit of the charges preferred against your complainant by stating that your complainant was guilty of law

violations as well as immoral conduct, solely for the purpose of doing injury to your complainant and to attempt to compromise the position of members of the Municipal Civil Service Board aforesaid in respect to their decision, which he sought to reverse illegally, by attempting thereby to expose said members to public censure, should they refuse to illegally reverse their said decision; that defendant Daigre's said letter, according to your complainant's information, reads as follows:

'I am satisfied that the Board acted in good faith. However, I sincerely request that you reconsider your decision for the following reasons:

'1. The dismissal of Lt. Dorsey was based upon the entire statement of Rosemary V. Harris, which included complaints of various law violations as well as violations of regulations and immoral conduct. You refused to hear the entire statement of Rosemary V. Harris, even though many irrelevant and immaterial charges against the Appointing Authority were admitted in evidence.

'2. In the opening statement submitted in writing by the Appointing Authority, we attempted to introduce certified copies of the indictments rendered by the Iberia Parish Grand Jury against Lt. Dorsey, charg-

ing him with Simple Kidnapping and Simple Battery of Rosemary V. Harris on or about April 17, 1967. You refused to consider this evidence.

'However, I cannot believe that you intended to compel the City to reinstate and re-employ in the same position, a police officer who stands charged with Simple Kidnapping and Simple Battery.

'The continued employment of any police officer indicted by the Grand Jury for Simple Kidnapping and Simple Battery is prejudicial to departmental service and to the public interest.

Respectfully yours,

J. Allen Daigre, Mayor
City of New Iberia'"

Acting in concert with the named defendants and contrary to prevailing state law and while simultaneously denying to petitioner his right of due process and equal protection as secured to him by the Fourteenth Amendment, the state regulatory agency reversed its decision and made petitioner's reinstatement dependent upon petitioner being exonerated in connection with the prosecution of him under the criminal charges lodged against him. This reversal is verbalized in these words as contained in the agency's letter to Mayor Daigle dated June 24, 1967, to-wit:

"Therefore, the order of dismissal of Lt. Dorsey dated April 25, 1967, and the supplement of May 8, 1967, are modified to suspension from duty without pay pending the court trial on the aforementioned indictments with the following provisions:

"(1) If Lt. Dorsey is exonerated he is to be reinstated retroactive to April 18, 1967, with full pay.

"(2) If he is convicted your order of dismissal will be upheld by virtue of his being convicted of a felony.

"This ruling will be made public just as was your letter of June 20, 1967.

"This action taken by this Board dated June 19, 1967, is hereby rescinded."

In his complaint petitioner further charges:

"Complainant further alleges that at no time since the rendition of the decision of said Board on June 19, 1967, was your complainant served with any application for rehearing or reconsideration; contrary to the statement of the said members of said Civil Service Board, at no time was further investigation conducted by said Civil Service Board concerning the legal rights of your complainant; at no time was any hearing conducted; at no time was

your complainant confronted by any witnesses or by any document or by any evidence of any type whatsoever except as he was able to read in the news media the exchange of correspondence among the defendants herein; furthermore, members of the aforesaid Municipal Civil Service Board knew that they in their official capacity had no legal authority to modify or rescind its previous ruling of June 19, 1967; that said defendants knew that its decision, after having been served on the appointing authority who in this case was defendant, J. Allen Daigre, had to 'be forthwith enforced by the appointing authority' and could be reversed only by the State Court having appellate jurisdiction thereof."

Petitioner prays for the following relief:

"WHEREFORE, premises considered, complainant respectfully prays that there be judgment in his favor and against defendants, J. B. Henderson, Harvey Britten, J. Allen Daigre, Lee Fournet, and the National Association for the Advancement of Colored People, condemning said defendants, jointly, severally and in solido, to pay to your complainant the sum of One Million Five Hundred Thousand ($1,500,000.00) Dollars.

"COMPLAINANT FURTHER PRAYS that upon final hearing of this cause on its merits, this Honorable Court will enter a permanent

injunction that will enjoin and restrain all of the defendants herein, their agents, employees or their successors in office and all persons acting in concert with them, forever from depriving your complainant of his rights, privileges and immunities as a citizen of the United States and of the State of Louisiana and particularly from depriving him of constitutional due process and equal protection of State laws and of the benefits of the decision of the New Iberia Municipal Fire and Police Civil Service Board of June 19, 1967.

"COMPLAINANT FURTHER PRAYS for trial by jury of all the issues of fact herein except as to the equity aspects hereof and for all costs."

To this complaint defendants Harvey Britten, Dr. J. B. Henderson and the National Association for the Advancement of Colored People filed a motion to dismiss in which it is asserted, "That the complaint against them in the above entitled action be dismissed by this court on the grounds that this court lacks jurisdiction and the complaint fails to state a claim upon which relief can be granted."

This Motion to Dismiss was sustained by the district court without opinion. On appeal the judgment maintaining the Motion to Dismiss was sustained and petitioner's lawsuit as against Harvey Britten, Dr. J. B. Henderson and the National Association for the Advancement of Colored People was dismissed. A timely rehearing application was made but denied

without opinion. A stay of mandate was granted for the purpose of permitting the filing of this application for writ of certiorari.

REASON FOR THE WRIT

Indeed the reasons for granting this application are impelling, and, to say the least, timely. The pleadings disclose that defendants knowingly invoked the precious right of free speech as a weapon of intimidation to bring about the denial to petitioner of his equally precious right of due process and equal protection. These defendants knew that the decision reinstating petitioner was final and had to be enforced, unless appealed to the state court having jurisdiction. They knew the state's regulatory agency had no authority to reconsider or recall this decision. They knew that the state officials with whom they conspired did not intend to appeal this decision. Knowing all these unarguable facts, they joined hands with the Mayor and Police Chief in an effort to bludgeon members of the state's regulatory agency into cooperative action leading to the arbitrary recalling of the decision. They thus knowingly abused the right of free speech — threatening mob rule and mob violence unless their demands were met — to bring about the destruction of petitioner's constitutional liberty. The methodology employed under the guise of free speech daily is becoming more commonplace and widespread with the concommitant result of the ever-expanding destruction of the constitutional liberties of others. The First Amendment privilege was never intended as a permissible facade to mask, or as a privilege to assert, a

course of conduct, which otherwise is illegal and which effects the destruction of the legal rights of others. Seemingly any judicial indifference towards the continuance of such abusive conduct portends of the ultimate erosion of the constitutional liberties of those others adversely affected, as is petitioner, and finally, and perhaps more important, of the eventual destruction of free speech itself.

Such a theory of this case is supported by the pleadings. A Motion to Dismiss admits all the allegations of fact in the complaint. *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 71 S.Ct. 624; *Robichaud v. Ronan,* 351 F.2d 533. The dismsisal of petitioner's lawsuit is contrary to the national jurisprudence. As the court stated in *Lewis v. Brautigam,* 227 F.2d 124, 127:

> "A complaint should not be dismissed on motion, unless, upon any theory it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts that could be proved in support of his claim."

In such a context it has been held that plaintiff's burden "in resisting a motion to dismiss for failure to state a cause of action is a relatively slight one." *W. H. Williams, et al v. Wheeling Steel Corporation* (1967), 266 F.Supp. 651. Such a motion is rarely granted and the burden of demonstrating the absence of a genuine material fact issue is upon the moving party and "all doubts are resolved against movant." *Carlson v. Chatfield Machinery Co.* (1964), 228 F.Supp.

162. See also *A. P. Brod & Co. v. Perlow* (2d Cir., 1967), 375 F.2d 393.

On the basis of the allegations of his complaint petitioner clearly states a cause of action to be tried to a jury. His allegations show a clear violation of petitioner's constitutional right of due process and equal protection. These rights were violated by state officials acting in conspiracy with defendants as to whom his lawsuit has been dismissed. Certain immutable principles apply in this case and form the frame of reference by which the correctness of the appellate court's decision is to be tested. Of prime significance is the principle that a state cannot exclude a person from an occupation in a manner or for reasons that contravene the due process and equal protection clause of the Fourteenth Amendment. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752. Moreover, all of the strictures encompassed by the concept of ordered liberty inherent in the Fourteenth Amendment apply with equal force against the actions of administrative and regulatory state agencies as they do in connection with the action of the judicial branches of state government. *Weiman v. Updegraff*, 344 U.S. 183, 73 S.Ct. 215; *Greene v. McElroy*, 360 U.S. 497, 79 S.Ct. 1400; *Cramp v. Board of Public Institutions, Orange County Florida*, 386 U.S. 278, 82 S.Ct. 275. In delineating the outer contours of the applicability of the Fourteenth Amendment against state action, where this court had under consideration the constitutionality of an administrative board hearing involving the employment rights of plaintiff, in *Greene v. McElroy*,

supra, the court said: (360 U.S. at P. 496, 79 S.Ct. at P. 1413)

> "Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment, which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been jealous to protect these rights from erosion. It has spoken not only in criminal cases, *e.g., Mattox v. United States,* 156 U.S. 237, 242-244, 15 S.Ct. 337, 339-340, 39 L.Ed. 409; *Kirby v. United States,* 174 U.S. 47, 19 S.Ct. 574, 43 L. Ed. 890; *Motes v. United States,* 178 U.S. 458, 474, 20 S.Ct. 993, 999, 44 L.Ed. 1150; *In re Oliver,* 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92

L.Ed. 682, *but also in all types of cases where administrative and regulatory actions were under scrutiny. E.g., Southern R. Co. v. Commonwealth of Virginia,* 290 U.S. 190, 54 S.Ct. 148, 78 L.Ed. 260; *Ohio Bell Telephone Co. v. Public Utilities Commission,* 301 U.S. 292, 57 S.Ct. 724, 81 L.Ed. 1093; *Morgan v. United States,* 304 U.S. 1, 19, 58 S.Ct. 773, 776, 999, 82 L.Ed. 1129; *Carter v. Kubler,* 320 U.S. 243, 64 S.Ct. 1, 88 L.Ed. 26; *Reilly v. Pinkus,* 338 U.S. 269, 70 S.Ct. 110, 94 L.Ed. 63. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 168-169, 71 S.Ct. 624, 646, 647, 95 L.Ed. 817 (concurring opinion).

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, *e.g.,* the Japanese Immigrant Case *(Kaoru Yamataya v. Fisher),* 189 U.S. 86, 101, 23 S.Ct. 611, 614, 47 L.Ed. 721; *Dismuke v. United States,* 297 U.S. 167, 172, 56 S.Ct. 400, 80 L.Ed. 561; *Ex parte Endo,* 323 U.S. 283, 299-300, 65 S.Ct. 208, 217, 89 L.Ed. 243; *American Power & Light Co. v. Securities and Exchange Commission,* 329 U.S. 90, 108-109, 67 S.Ct. 133, 143, 91 L.Ed. 103; *Hannegan v. Esquire,* 327 U.S. 146, 156, 66 S.Ct. 456, 461, 90 L.Ed. 586; *Wong Yang Sung v. Mc-*

Grath, 339 U.S. 33, 49, 70 S.Ct. 445, 453, 94 L.Ed. 616, *cf. Anniston Mfg. Co. v. Davis*, 301 U.S. 337, 57 S.Ct. 816, 81 L.Ed. 1143; *United States v. Rumely*, 345 U.S. 41, 73 S.Ct. 543, 97 L.Ed. 770. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition."

This Court's last expression on the principle was verbalized by Mr. Justice White as recently as April, 1968, in *Avery v. Midland County, Texas, et al*, 88 S.Ct. 1114, 1117-1118, in these words:

"The equal protection clause reaches the exercise of state power however manifested, whether exercised directly or through *municipal subdivisions of the state.*

'Thus the prohibitions of the Fourteenth Amendment extend to all action of the state denying equal protection of the law, whatever the agency of the state taking the action * * *.' *Cooper v. Aaron*, 358 U.S. 1, 17, 78 S.Ct. 1401, 1409, 3 L.Ed. 2d 5 (1958).

"Although the forms and functions of local government and the relationship among the various units are matters of state concern, *it is now beyond question that a state's political subdivisions must comply with the Fourteenth Amendment. The actions of local gov-*

ernment are the actions of the state. A city, town or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of the law."

Mr. Dorsey's complaint must be evaluated against the backdrop of this national jurisprudence. Where such an evaluation is fairly and objectively undertaken the conclusion is inescapable that the decision of the appellate court must be reversed. The affirmative allegations of his complaint demonstrably establish that defendants have denied and deprived him of constitutional due process and equal protection as secured to him by the Fourteenth Amendment.

When Mr. Dorsey's right to remain employed as a police officer of New Iberia, Louisiana, was challenged by the appointing authority, he invoked the state's prevailing remedial laws, which granted him the unconditional right to a fair hearing. In due course the reasonableness of the appointing authority's challenge was aired before the administrative agency designated to conduct such a hearing. After this hearing the appointing authority's dismissal of Mr. Dorsey was reversed or modified. The decision of the administrative agency ordered the reinstatement of Mr. Dorsey to his former position as lieutenant on the New Iberia Police Force. According to applicable state law (Louisiana Constitution, Article 14, Section 15.1, Subparagraph 31), that decision had to "be forthwith enforced by the appointing authority." Thus, by virtue of that

decision Mr. Dorsey was entitled immediately to be reinstated and to be paid all accrued and unpaid wages. Applicable state laws make no provision for a rehearing or reconsideration of such a decision. The only available remedy for either the appointing authority or the employee involved where such a decision is rendered by the administrative board is an appeal to a state court having jurisdiction. Such an appeal may be made within thirty days from the date of the decision. And where such an appeal is taken the "hearing shall be confined to the determination of whether the decision made by the Board was made in GOOD FAITH for cause under the provision of this section. No appeal to the court shall be taken except upon these grounds."

The complaint demonstrates that the appointing authority neither took an appeal nor enforced the decision of the Board. On the contrary, the complaint charges that the defendants conspired together to deprive Mr. Dorsey of the benefits and protection of applicable state laws and particularly of the fruits and benefits of the formal decision of the Civil Service Administrative Board. Defendants embarked upon a course of conduct designed to intimidate members of the administrative board into a conspiracy with them to arbitrarily recall its formal decision, where they knew that this administrative agency was without legal authority to do so.

The stratagem pursued engaged defendants Britten, Henderson and the N.A.A.C.P. in a perverted exercise of the precious right of free speech. This included

staged demonstrations directed against members of the administrative board and statements delivered to the news media calculated to subject the board members to public obloquy and ridicule, should the Board not recall its decision. In the process these defendants exploited local prejudice and preferences. With calculated adroitness these defendants included in their public statements the fact that they had met with Bishop Boudreaux concerning their complaints against the decision of the Board. This ploy was transparently purposed to convey to members of the Board and the general public the suggestion that defendants' protest bore the official imprimatur of the Catholic hierarchy of the predominantly Catholic community of New Iberia, Louisiana. With synchronous precision, defendant Daigre, in his capacity as appointing authority and Mayor of New Iberia, aided by defendant Fournet, as Chief of Police, articulated the fancied wrongs committed by the members of the Board and postulated that the Board's decision was "prejudicial * * to the public interest." Significantly, defendant Daigre did not communicate his views or his complaints through official channels, such as through his counsel of record. Indeed not. Defendant Daigre delivered his letter to the local newspaper for publication before it reached the members of the Board. Moreover, his was not a complaint that pointed to new evidence. Indeed not. He simply reurged the complaint registered by his attorney during the hearing. In this letter he writes: "* * * You refused to hear the entire statement of Rosemary V. Harris, even though many irrelevant and immaterial charges against the appointing authority were admitted in evidence." Further, Daigre lamented

in this letter: "In the opening statement submitted in writing by the appointing authority, we attempted to introduce certified copies of the indictments rendered by the Iberia Parish Grand Jury against Lt. Dorsey, charging him with simple kidnapping and simple battery of Rosemary V. Harris on or about April 17, 1967. You refused to consider this evidence."

Then, after thus having unilaterally exposed members of the Board to the general public as either being grossly wanting in prudence or hopelessly weighted with an unconscionable racial prejudice against Negroes, defendant Daigre, with pompous piety rhetorically mocked:

> "However, I cannot believe that you intended to compel the City to reinstate and reemploy in the same position, a police officer who stands charged with simple kidnapping and simple battery."

Dogmatically, Daigre concluded: "The continued employment of any police officer indicted by the Grand Jury for simple kidnapping and simple battery is prejudicial to departmental service and to the public interest."

The message generated by defendants' conduct was clear. Dorsey was an undesirable, a person guilty of crime and otherwise immoral. He was a virtual pariah. No right-thinking, God-fearing, conscientious public official should dare continue Dorsey as a police officer, his legal rights notwithstanding. Moreover, the

judgment against keeping Dorsey as a police officer had been tacitly approved by the religious leaders of the community. The decision of the Board ordering Dorsey's reinstatement was therefore contrary to public opinion, contrary to the moral judgment of the community and consequently "prejudicial * * to the public interest." It was, therefore, the inescapable duty of the members of the Board to reverse the decision, regardless of its legal merits. And unless these public officials complied with this demand, there would be public unrest, exemplified by demonstrations organized by appellees, and eventually there would develop racial violence. Thus, defendants presented members of the Board with a clear-cut alternative: RECALL YOUR DECISION IN FAVOR OF DORSEY OR BE RESPONSIBLE FOR THE CONSEQUENCES TO FOLLOW FROM THE VORACIOUS DEMANDS OF MOBOCRACY.

Thus confronted, the members of the Board elected to conspire with defendants in their efforts to deprive Mr. Dorsey of his civil rights. These defending state officials agreed to recall their formal decision and thereby to deprive Mr. Dorsey of his rights. In carrying out their purpose, they attempted to mask their misdeed so as to make it appear to be that which it was not. Despite the fact that members of the Board acknowledged in their letter to defendant Daigre that they met "to consider your request of June 20, 1967, that the Board *reconsider its decision dated June 19, 1967*," in rescinding their formal decision, they pretended to be acting under the authority of Article 14, Section 15.1, Subparagraph 30 (c), of the Louisiana

Constitution, which authorizes this Board to initiate an investigation of its own, independent of any complaint from an appointing authority. Even the most casual examination of the content of the rescission order belies this claim.

Louisiana Constitution, Article 14, Section 15.1, Subparagraph 30, provides for corrective and disciplinary action for maintaining standards of service. Primary responsibility for exerting corrective and disciplinary action is delegated to the appointing authority. Causes for disciplinary action are enumerated in this section. Significantly, however, this section provides that the appointing authority shall not have exclusive authority to initiate discipline. In Paragraph 15 (c) of Subparagraph 30 the Civil Service Board is granted the power to investigate the conduct and performance of any employee and "thereupon may render such judgment and/or action to be taken by the appointing authority." This is a form of check-and-balance provision designed to hedge the official conduct of the appointing authority so as ultimately to insure the high standards of service exacted by the merit system established by this state law. Thus, where the appointing authority fails to take disciplinary measures against an employee whose conduct indicates that some form of discipline is necessary, the Board itself has the authority to investigate that conduct and thereupon order the appointing authority to take disciplinary measures against the employee. But this contingency, giving rise to the exercise of that authority in the Board, never existed in Mr. Dorsey's case. The Board in fact did not make an investigation, did not receive any

new evidence and concerned itself with nothing other than what had already been before it. Furthermore, the Board did not issue an order directing the appointing authority to take a certain course of disciplinary action against Mr. Dorsey. The Board simply rescinded its prior decision which called for Mr. Dorsey's reinstatement as a police officer of the City of New Iberia. Thus, its pretended reliance on its authority to initiate an investigation to rescind its previous order which invested Mr. Dorsey with the right of reinstatement is but a transparent sham. This pretense exemplifies but a sophisticated effort by state officials to discriminate against Mr. Dorsey. This is of little moment, for, as this court has said, "One must be ever aware that the Constitution forbids sophisticated as well as simple-minded modes of discrimination." *Reynolds v. Simms*, 377 U.S. 533, 563, 84 S.Ct. 1362, 1382; *Lane v. Wilson*, 307 U.S. 268, 275, 59 S.Ct. 872, 876; *Gomillion v. Lightfoot*, 364 U.S. U.S. 339, 342, 81 S.Ct. 125, 127.

Even if it be considered that the action of the Board constitutes a good-faith exercise of the authority vested in it by Subparagraph 30 aforesaid, the action nevertheless is patently illegal and obviously unconstitutional, vis-a-vis Mr. Dorsey's federally secured rights. In the first instance, the basis assigned for the rescission of its previous order is not one included in the reasons enumerated in Subparagraph 30 aforesaid. This being so, there is no legal basis justifying the action. In fact, the only basis assigned by the Board for its rescission order is the claimed existence of indictments pending against Mr. Dorsey. But as to this, members of the Board stated, "We shall presume that Lt. Dorsey is

innocent until he is duly proved guilty." Thus, these defendants presumed Mr. Dorsey to be innocent of the very conduct assigned by them as the exclusive basis for rescinding its prior order and, in so doing, for denying him the benefits of that formal decision. Such circumlocution betrays a gross misuse of power to the detriment of Mr. Dorsey. Such misuse of power is typically considered as action taken under color of state law as contemplated by the Civil Rights Act. As stated by the court in *United States v. Classic* (1941), 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368:

> "Misuse of power possessed by virtue of state law and made possible only because a wrongdoer is clothed with the authority of state law, is action taken 'under color' of state law."

Furthermore, as the complaint affirmatively states and the statement of the members of the Board unerringly demonstrates, the Board conducted no investigation, heard no evidence, did not notify Mr. Dorsey of any hearing and gave him no opportunity to be heard, when they arbitrarily took from him his property rights residing in their prior decision ordering his reinstatement. By this conduct, these defendants denied Mr. Dorsey due process.

Due process, said the court in *Trustee of Dartmouth College v. Woodward,* 4 Wheat 518, 4 L.Ed. 629, is "a law which hears before it condemns, and which proceeds upon inquiry, and renders judgment only after trial."

Due process is secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice. *Caldwell v. Texas,* 137 U.S. 692, 11 S.Ct. 224, 34 L.Ed. 816; *Duncan v. Missouri,* 152 U.S. 377, 14 S.Ct. 570, 38 L.Ed. 485.

Said the court in *Holden v. Hardy,* 169 U.S. 366, 389, 390, 18 S.Ct. 383, 387, 42 L.Ed. 780:

> "This court has never attempted to define with precision the words 'due process of law' nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice, which inhere in the very idea of free government, which no member of the Union may disregard, *as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defense.*"

Under the plain terms of the applicable state law, all decisions of the administrative board in question "shall be forthwith enforced by the appointing authority." Thus, the decision of the Board reinstating Mr. Dorsey to his position as lieutenant on the police force of New Iberia, Louisiana, had to be forthwith enforced by defendant Daigre, the appointing authority, unless he elected to appeal that decision to the appropriate state court. Defending state officials, while acting under color of state law, however, refused to enforce the decision of this administrative board. Moreover, the complaint charges that while acting in con-

spiracy with appellees, they not only failed to enforce this decision, but through the gross misuse of power possessed by them, brought about the arbitrary rescission of that decision and stripped Mr. Dorsey of the benefit and protection of prevailing state laws. In so doing, defendants denied and deprived Mr. Dorsey of his federally secured right to the equal protection of the laws. Such action is proscribed by the Fourteenth Amendment. As stated by the court in *Cooper, et al., v. Aaron, et al.* (1958), 78 S.Ct. 1401, 1409, 358 U.S. 1:

> "The controlling legal principles are plain. The command of the Fourteenth Amendment is that no 'state' shall deny to any person within its jurisdiction the equal protection of the laws. 'A state acts by its legislative, its executive, or its judicial authorities. It can act in no other way. *The constitutional provision, therefore, must mean that no agency of the state or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws.* Whoever, by virtue of public position under a state government * * * denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state. This must be so, or the constitutional prohibition has no meaning.' *Ex parte, Virginia,* 100 U.S. 339, 347, 25 L.Ed. 676. Thus the prohibitions of the Fourteenth Amendment extend to all action of the state denying equal

protection of the law; whatever the agency of the state taking the action * * *."

In addressing itself to the meaning of the phrase "equal protection of the laws," the court in *State of Missouri, ex rel., Gaines v. Canada, et al.* (1938), 59 S.Ct. 232, 236, 305 U.S. 337, said: "The equal protection of the laws is 'a pledge of the protection of equal laws.' *Yick Wo v. Hopkins,* 118 U.S. 356, 369, 6 S.Ct. 1064, 1070, 30 L.Ed. 220. Manifestly, the obligation of the state to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction. It is there that the quality of legal right must be maintained. That obligation is imposed by the Constitution upon the states severally as governmental entities, — each responsible for its own laws establishing the rights and duties of persons within its borders. * * *"

Again in *Skinner v. State of Oklahoma* (1942), 52 S.Ct. 1110, 1113, 316 U.S. 535, the court further observed:

"* * * The guaranty of 'equal protection of the laws is a pledge of the protection of equal laws.' *Yick Wo v. Hopkins,* 118 U.S. 356, 369, 6 S.Ct. 1064, 1070, 30 L.Ed. 220. When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment."

The broad reach of the federal statute under consideration was defined almost thirty years ago in *Hague v. C.I.O.* (1939), 307 U.S. 496, 59 S.Ct. 954, to include all of the rights embraced by the Fourteenth Amendment in these words:

> "It (1983) thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that amendment. * * *"

"Whoever," said the court in *Ex Parte, Virginia,* 100 U.S. 339, 347, "by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates these constitutional inhibitions."

In the recent decision of *Monroe v. Pape,* 81 S.Ct. 473, 476, the court said:

> "There can be no doubt at least since *Ex Parte, Virginia,* 100 U.S. 339, 346-347, 25 L.Ed. 676, that Congress has the power to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a state and represent it in some capacity, *whether they act in accordance with their authority or misuse it.* * * *"

Thus, that a statement of a claim under 42 U.S.C.A. 1983 is asserted in the complaint is made somewhat

more than manifest by the thrust of the jurisprudence exemplified by the following cases: *Cooper, et al., v. Aaron, et al.* (1958), 358 U.S. 1, 78 S.Ct. 1401; *State of Missouri, ex rel, Gaines v. Canada, et al.* (1938), 305 U.S. 337, 59 S.Ct. 232; *Monroe v. Pape*, 81 S.Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177; *Hague v. C.I.O.*, 307 U.S. 496, 59 S.Ct. 954; *Birnbaum v. Trussell*, 371 F.2d 672; *Basista v. Weir*, 340 F.2d 740; *Nesmith v. Alford*, 318 F.2d 110; *Cohen v. Norris*, 300 F.2d 24; *Hughes v. Noble*, 395 F.2d 495; *Brazier v. Cherry*, 293 F.2d 400; *Coleman v. Johnson*, 247 F.2d 273; *United States, ex rel., Potts v. Rabb*, 141 F.2d 45; *Valle v. Stingel*, 176 F.2d 697; *Cancino v. Sanchez*, 379 F.2d 808; *Jenks v. Henys*, 378 F.2d 335; *Brown v. Brown*, 368 F.2d 992; *Morgan v. Labiak*, 368 F.2d 338; *DeWitt v. Pail*, 366 F.2d 682; *Smith v. Hampton Training School for Nurses*, 360 F.2d 577; *Rivers v. Royster*, 360 F.2d 592.

It is of little moment that the defendants involved in this application are private citizens. These defendants are charged by the pleadings with having engaged in a conspiracy with state officials to deprive petitioner of his legal rights secured by 42 USC, Sections 1981, 1983 and 1988. Under the well settled jurisprudence the act of conspiring with state officials makes their action "state action" and renders these defendants solidarily liable with these state officials. *Birnbaum v. Trussell*, 371 F.2d 692; *Hoffman v. Halden*, 268 F.2d 280; *Lewis v. Brautigam*, supra; *Scolnick v. Winston*, 219 F.Supp. 836; *Egan v. City of Aurora*, 291 F.2d 706; and *Jennings v. Nester*, 217 F.2d 153.

In the district court the position of the defendants in this application in support of their Motion to Dismiss was essentially that the First Amendment privilege of free speech insulated them against any liability for the conduct described by the pleadings. The district court sustained this Motion to Dismiss without opinion. On appeal, the appellate court avoided the essential issues of this defense, as well as the issues presented by the complaint, by characterizing petitioner's lawsuit as that which it is not and wholly misconceived of the central issue involved in his lawsuit. The appellate court's decision rests on three main points: (a) A misconceived statement of the central issue involved in plaintiff's lawsuit, (b) State law authorized the state regulatory agency to modify its order as it did, and (c) Petitioner had an effective remedy in state courts. Respectfully petitioner urges that the appellate court is wrong on all three counts.

POINT A

In the opening statement of the appellate court's opinion that court, in speaking of petitioner's complaint, said:

> "This appeal raises the question whether tenure rights as a City Police Officer, which are protected by the Louisiana Constitution in Article 14, can be vindicated in an action under 42 USC, Section 1983."

In his application for rehearing petitioner emphasized that the appellate court had woefully miscon-

ceived of the central issue involved in his lawsuit as reflected by this statement. Petitioner seeks by his lawsuit primarily an award of damages based upon the allegations that defendants have deprived him of his constitutional rights contemplated by the Fourteenth Amendment and 42 USC, Sections 1981, 1983 and 1988. He also seeks injunctive relief as to the continuance of the wrongful conduct attributed to defendants, as authorized by 42 USC 1983. A mere reading of his prayer shows that this is the case. Any mention of his state protected tenure as a City Police Officer is relevant only in the sense that it is a corollary of the central issue; it is the factual matrix from which springs the central issue. In his application for rehearing he complained before the appellate court that its misconception of the central issue operated to substitute the incidental for the substantial issue and thus brought about an avoidance rather than a decision of the actual issue presented for decision. In essence petitioner charges that the defendants in this application and state officials took the law into their own hands, thwarted it and molded it to suit their own willful purpose. They took from petitioner the administrative decision in his favor. In doing this they took a short cut; they perfected no appeal; they conducted no hearing, all as directed by law. They simply reversed the administration decision through the simple expediency of announcing its reversal. When they did this they applied prevailing state law unequally against Mr. Dorsey. This was accomplished by a gross abuse of the power possessed by the state officials involved. Thus they denied petitioner of due process

and equal protection as secured to him by the Fourteenth Amendment.

POINT B

In further support of its opinion the appellate court, in footnote # 4 thereof, stated:

> "Appellees' vague claim of deprivation of due process and equal protection is without merit. *The Louisiana Constitution specifically authorizes modification of an order when the prior Board decision was undesirable, unnecessary, or contrary to the public interest.* La. Const. Art. 14 § 15.1 (7d). * * *."

The foregoing italicized statement, which the appellate court assigned as the law of the State of Louisiana, is simply not the law of Louisiana. On the contrary in the case of *Oliver v. Shreveport Municipal Fire & Police, C.S. Board,* 227 La. 1067, 81 So.2d 398, the Louisiana Supreme Court, the state's court of last resort, expressly held that the provisions of Article 14, Section 15.1 (7d) do not apply and thus are not controlling of a public hearing involved in Mr. Dorsey's case and contemplated by paragraph 31 of Section 15.1, Article 14 of the Louisiana Constitution. On the contrary, and in keeping with what Mr. Dorsey asserted in his lawsuit, which must be accepted as true, the Louisiana Supreme Court expressly held that unless the action of the Civil Service Board is appealed to the state courts, that action is final. This is precisely what Mr. Dorsey alleges in his complaint. Thus

the appellate court not only failed to accept as true the affirmative allegations of Mr. Dorsey's petitioner, in disposing of the Motion to Dismiss, but it asserted as state law that which is simply not state law in dismissing Mr. Dorsey's lawsuit. Such a decision therefore must be reversed.

POINT C

In support of its decision the appellate court further stated in footnote # 4 thereof:

> "Moreover, even in the face of such modification, Dorsey still retained a state constitutional right to the judicial review of all prior orders of the Board."

In his application for rehearing Mr. Dorsey challenged the correctness of that statement. Furthermore he pointed out that according to the decision of this court in *Monroe v. Pape*, 81 S.Ct. 473, 482, even if he did have an available state remedy, he is still entitled to the remedy of a trial in federal court under 42 USC, Section 1893. As this court said in *Monroe v. Pape:*

> "It is no answer that the state has a law which if enforced would give relief. Federal remedy is supplementary to the state remedy and the latter need not be first sought and refused before the federal one is invoked."

Thus on all three counts the appellate court's deci-

sion is contrary to the jurisprudence of both the federal and state judiciaries. Respectfully petitioner urges that, in view of the far reaching effects of that decision, review should be granted to reverse it. .

Defendants' position before the district court is equally without merit. The burden of their position, simply stated, was that the right to free speech is an unlimited license to do anything in the exercise of it. Such a contention is egregiously erroneous.

In *Blackwall, et al v. Issaquena County Board of Education, et al* (5th Cir., 1966), 363 F.2d 749, 758, in speaking to this question, the court said:

> "* * * The constitutional guarantee of freedom of speech 'does not confer an absolute right to speak' and the law recognizes that there can be an abuse of such freedom. *The Constitution does not confer 'unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of these who abuse this freedom.'* * * *"

The complaint charges that appellees exercised their right of free speech as a means of persuading state officials into violating the law. The First Amendment does not confer such a right upon appellees. *Giboney v. Empire Storage Co.*, 336 U.S. 490, 69 S.Ct. 684, 983 L.Ed. 834. Said the court in *Casper v. Brittain*, 245 F.2d 92, 95:

"The First Amendment does not confer the right to persuade others to violate the law."

Of similar import are the cases of *Bains, et al., v. City of Danville, Va.; Chase, et al., v. McCain, et al.; McGhee, et al., v. City of Danville; Lewis, et al., v. Bennett, et al.; Chase, et al., v. Aiken; Page, et al., v. McCain, et al.* (4th Cir. 1964), 337 F.2d 579, cert. denied, 85 S.Ct. 1772, 381 U.S. 939, 14 L.Ed.2d 702, affd. in part, 357 F.2d 756, cert. denied, 86 S.Ct. 1915, 384 U.S. 890, 16 L.Ed.2d 996, rehearing denied, 87 S.Ct. 12, 385 U.S. 890, 17 L.Ed.2d 121. In these consolidated cases the court held (337 F.2d at p. 586):

"Those First Amendment rights incorporated into the Fourteenth Amendment, however, *are not a license to trample upon the rights of others. They must be exercised responsibly and without depriving others of their rights, the enjoyment of which is equally as precious* * * *."

CONCLUSION

The complaint affirmatively establishes that Mr. Dorsey had acquired a permanent tenure in his employment as a police officer of the City of New Iberia, Louisiana. This status was conferred on him by state law. When his right to continue in that status was challenged, he invoked the provisions of state law, which granted him a right to a formal hearing as to the validity of that challenge. At the hearing before the designated administrative agency, the challenge

was found to be invalid. The administrative state agency thereupon ordered the appointing authority (one of the defendant state officials, Daigre) to reinstate Mr. Dorsey to his former position with back pay. The provisions of state law required defendant Daigre to comply with this order or to appeal this decision. Defendant Daigre did neither. At this point the conspiracy in question was hatched. All of the defendants decided that they would take from petitioner his property right of reinstatement residing in the decision of the state regulatory agency not by complying with the law but by violating it. They decided to take the law into their own hands and substituted their will for that of the law. It was decided and determined that defendants Britten, Henderson and the N.A.A.C.P. would mobilize demonstrations as a show of force to compel members of the state agency to violate the law by recalling its decision, and this they did. It was further determined that simultaneously therewith state officials, Daigre (Mayor), and Fournet (Chief of Police) would publicly ridicule and embarrass the members of the state agency by unilaterally exposing them to the general public as either being grossly wanting in prudence or hopelessly weighted with an unconscionable racial prejudice against negroes, as a method of compelling these state officials to violate state laws by recalling its decision in favor of petitioner, and this they did successfully.

Mr. Dorsey stands almost virtually as a man without a country. He has been turned upon by state officials and denied of the rudiments of due process and equal protection secured to him by the Fourteenth Amend-

ment. He has applied to the federal judiciary for relief and for a trial of his claim to damages because of the denial of his constitutional liberty but thus far without success. The decision by which he has been denied of effective access to the federal judiciary instances a gross misconception of the nature of his lawsuit and a mistatement of applicable state and federal laws.

Respectfully petitioner urges that review must be granted, if his constitutional liberties secured by the Fourteenth Amendment are to be vindicated, and if the gross abuse of free speech by highly organized minority groups to the irreparable injury of other citizens is not to run amuck.

Respectfully submitted,

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

ATTORNEY FOR
APPELLANT

CERTIFICATE

STATE OF LOUISIANA
PARISH OF LAFAYETTE

I, J. Minos Simon, counsel for petitioner and a member of the United States Supreme Court, hereby affirm

under oath that a copy of the foregoing petition for a writ of certiorari has been served on the parties hereto by mail, in a properly addressed envelope, postage prepaid, as follows, to-wit:

Honorable Edward W. Wadsworth, Clerk
United States Court of Appeals, Fifth Circuit
400 Royal Street, Room 408
New Orleans, Louisiana 70130

Mr. Minos H. Armentor
Attorney at Law
115 West Pershing Street
New Iberia, Louisiana 70560

Mr. Louis Berry
Attorney at Law
1408 Ninth Street
Alexandria, Louisiana

Mr. Robert L. Carter
Ms. Joan Franklin
Attorneys at Law
1790 Broadway
New York, New York 10019

Lafayette, Louisiana, this ____ day of May, 1969.

_____

SWORN TO AND SUBSCRIBED before me on this ____ day of May, 1969, at Lafayette, Louisiana.

Ronald E. Dauterive
Notary Public

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26368

HENRY DORSEY,
Plaintiff-Appellant,

versus

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

(March 18, 1969)

Before THORNBERRY and AINSWORTH, Circuit Judges, and DAWKINS, District Judge.

AINSWORTH, Circuit Judge: This appeal raises the question whether tenure rights as a city police officer, which are protected by the Louisiana Constitution in Article 14, can be vindicated in an action under 42 U.S.C. § 1983.

Accepting the "well-pleaded facts as the hypothesis for decision," *Collins v. Hardyman*, 341 U. S. 651, 652, 71 S. Ct. 937, 938 (1951), the case can be stated briefly as follows: Appellant Dorsey was a member of the New Iberia, Louisiana, police force for twelve years until his dismissal by the police chief on April 25, 1967. The dismissal was precipitated by an incident in which Dorsey allegedly violated police regulations and allegedly committed simple kidnap and simple battery upon Mrs. Rosemary V. Harris, a citizen of New Iberia. Dorsey appealed his dismissal to the New Iberia Fire and Police Civil Service Board, pursuant to constitutional procedures. La. Const. Art. 14, § 15.1 [31]. The Board thereupon reinstated Dorsey without considering evidence of the indictments pending against him. A public outcry, alleged to have been conceived and fostered to a large extent by appellees, ultimately resulted in the Board's reversing its prior decision and suspending Dorsey pending the outcome of his trial for kidnap and battery.[1]

Title 42 U.S.C. § 1983 was originally enacted as Section 1 of the Anti-Ku Klux Klan Act of 1871. 17 Stat. 13 (1871). The act was aimed primarily at vindicating constitutional rights which were being abused in the post-bellum South. *See generally,* Virginia Commis-

[1]At this point Dorsey could have vindicated his rights by a judicial review procedure authorized in the Louisiana Constitution. Nevertheless, Dorsey chose to claim in a federal forum that the Board acted unlawfully and that appellees conspired in and prompted such unlawful action - all in derogation of some right protected by 42 U.S.C. § 1983. This appeal is from the granting of a motion by appellees to dismiss Dorsey's claim pursuant to Rule 12(b)(6), Fed. R. Civ. P.

sion on Constitutional Government, *The Reconstruction Amendments' Debates* (1967), pp. 484-570. Soon after its enactment, Congress revised the so-called civil rights statutes so as to protect all federal rights - be they constitutional or statutory. *See Screws v. United States*, 326 U. S. 91, 99, 65 S. Ct. 1031, 1034 (1945); *Hague v. Committee for Industrial Organization*, 307 U. S. 496, 510, 59 S. Ct. 954, 961 (1939).

This statute is now codified in 42 U.S.C. § 1983:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The motion to dismiss raises a simply phrased question: Has Dorsey been deprived of a "right" secured by the "Constitution and laws"?[2] The Third Circuit has answered an apparently similar question in the negative:

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[2]Dorsey's brief alludes to 42 U.S.C. §§ 1981 and 1988. Without intimating an opinion as to the applicability of these sections to the other defendants named in Dorsey's complaint who are not parties to the motion to dismiss, we note that Sections 1981 and 1988 cannot be made applicable to the appellees.

> "It is perfectly plain that the plaintiff's right, if any he has, to be reinstated as a township policeman is derived solely from the law of Pennsylvania. This is not a right secured by the Constitution and laws of the United States within the meaning of Section [1983] of the [U. S. Code]."

Charters v. Shaffer, 3 Cir., 1950, 181 F. 2d 764, 765. Whatever "rights" Dorsey may have to be reinstated as a New Iberia policeman derives solely, under the facts alleged in this record, from the law of Louisiana. Their deprivation, therefore, is not the subject of a claim for relief under 42 U.S.C. § 1983. *See Snowden v. Hughes*, 321 U. S. 1, 11, 64 S. Ct. 397, 402 (1944). *Cf. Love v. Navarro*, C. D. Calif., 1967, 262 F. Supp. 520, 552 (right to have state law obeyed is not a federal right protected by Section 1983).[3]

Any plaintiff who can allege deprivation of a *federal* right by reason of action under color of law can maintain his action under Section 1983. But it is axiomatic that these civil rights statutes of the post-bellum period were not intended to preempt state laws in their proper role of vindicating what are essentially state-guaranteed rights. Read against the background of its enactment and the plainly available opportunities under Louisiana law for Dorsey to vindicate his employ-

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[3]Our resolution of this case obviates the necessity for passing on the problem of whether the N.A.A.C.P. was acting under color of law within the meaning of Section 1983 as construed by the Supreme Court in United States v. Price, 383 U. S. 787, 86 S. Ct. 1152 (1966).

ment "rights," we think that Section 1983 cannot be construed to convert this state cause of action into a federal claim for relief.[4]

We, therefore, affirm the action of the trial judge in granting the motion to dismiss Dorsey's complaint.

AFFIRMED.

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[4]Appellees' vague claim of deprivation of due process and equal protection is without merit. The Louisiana Constitution specifically authorizes modification of an order when the prior Board decision was undesirable, unnecessary, or contrary to the public interest. La. Const. Art. 14, § 15.1[7d]. Moreover, even in the face of such modification, Dorsey still retained a state constitutional right to judicial review of all prior orders of the Board.

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130
TEL. NO. 527-6514

April 17, 1968

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re: No. 26368 - Henry Dorney
v. Nat'l Assn. for the Advancement of
Colored People, Et Al

Gentlemen:

The following action has this day been taken in the above case:

( ) Motion to consolidate granted.

( ) Motion to supplement or correct record granted.

( ) Motion of ( ) for leave to file supplemental brief granted.

( ) Stipulation as to time for filing briefs has been granted.

( ) Motion for leave to file brief in excess of pages under Rule 28(g) F.R.A.P. granted.

( ) The Court's opinion has this day been rendered and a copy thereof is enclosed.

( ) Motion for leave to file petition for rehearing in excess of pages under Rule 40(b) F.R.A.P. granted.

(X) A stay of mandate has been granted to and including May 14, 1968

( ) Order enclosed has been entered.

Very truly yours,

EDWARD W. WADSWORTH, *Clerk*

By E. E. Windhorst, Jr.
Deputy Clerk

cc: Mr. J. Minos Simon
Mr. Louis Berry
Mr. R. F. Van Lierop
Mr. M. H. Armentor
Mr. Mathew Perry

FFI MI—5-9-68-10M-2147

FOR THE FIFTH CIRCUIT

October Term, 1968

No. 26368

D. C. Docket No. CA 13362

HENRY DORSEY,

Plaintiff-Appellant,

versus

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

Before THORNBERRY and AINSWORTH, Circuit Judges, and DAWKINS, District Judge.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

Costs of the appeal shall be taxed against the plaintiff-appellant.

March 18, 1969

Issued as Mandate:

U. S. COURT OF APPEALS
FILED
APR 14 1969
EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26368

HENRY DORSEY,

Plaintiff-Appellant,

versus

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORD PEOPLE, ET AL.,

Defendants-Appellees.

- - - - -

Appeal from the United States District Court for the Western District of Louisiana

- - - - - -

(April 14, 1969)

ON PETITION FOR REHEARING

Before THORNBERRY and AINSWORTH, Circuit Judges, and DAWKINS, District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.